



REAL ESTATE REGULATORY AUTHORITY (RERA), BIHAR

6th Floor, Bihar State Construction Corporation Building, Shastri Nagar, Patna-800023

Complaint Case No. RERA/12/2018

Ms Chanchal Wina.....Complainant

Vs

M/s Technoculture Building Centre Pvt Ltd.....Respondent

Present: For the Complainant:-Mr Sharad Shekhar, Advocate
For the Respondent:- Ms Shivangi, Advocate

For the Authority :- Mr Sumit Kumar, Advocate
Ms Shivi, Advocate

30/01/2019

ORDER



1. Smt Chanchal Wina, a resident of Village-Bahera PO Pananiyan Dist Gaya has filed a complaint petition to the Authority under Section-31 of the Real Estate (Regulation & Development) Act, 2016 in June, 2018 against M/s Technoculture Building Centre Pvt Ltd (Vastu Vihar) for removal of structural deficiencies in her booked apartment and delay in handing over possession of the apartment etc. Accordingly, a notice was issued to the respondent company on 25/06/2018 with the direction to submit the response within thirty days. The respondent company submitted its response to the complaint on 27/07/2018. Thereafter, hearings were held on 28/08/2018, 29/09/2018, 05/10/2018, 01/11/2018, 06/12/2018, 12/12/2018 and 19/12/2018. An opportunity was also given to the complainant and the respondent company to see whether any conciliation could take place between the parties. Initially both the parties informed that they were about to enter into a compromise

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agreement but finally they could not arrive at any kind of out of court settlement.

Complaint of the Petitioner

2. In her petition, the complainant has stated that she had entered into an agreement for purchasing Apartment no.109 in the project "Aditi-B Block" located at Ashopur, Patna of the respondent company on 02/03/2012. She stated that the apartment was not being constructed as per design shown at the time of booking the Apartment. She also cited several discrepancies like shortage of width of the flat by ten inches (10"), existence of pillar in the balcony, lower height of slab of kitchen etc. She stated that though no hand over date of the apartment has been mentioned in the agreement, she had been repeatedly requesting the respondent company to give a fixed date for handing over the possession but no such date has been given. She claimed that though the respondent company had promised to give the flat by December, 2015, the flat has not yet been completed even after passage of three years. As a result, she is facing financial difficulties from both sides as she has to pay back the monthly instalments of bank loan on the one hand while on the other hand she has been paying the rental of Rs 8000/- per month to her landlord.

Response of the Respondent Company:

3. The Respondent Company in its response has confirmed that the complainant had booked a 2 BHK Apartment no.109 in B-Block of the project "Aditi" located at Ashopur, Patna on 02/03/2012 in the joint name of herself and her husband Mr Sanjay Kumar. They executed a registered agreement deed on the same date. After registration of the agreement, the Respondent Company claimed that they started construction of the apartment on promise of payment by the complainant but the complainant did not make payment for a long period of time on the plea that she was trying to get the home loan from a bank. Only after getting the loan sanctioned, the complainant paid a sum of Rs 6.80 lakh through RTGS from her loan account. The



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Respondent Company further stated that they did some extra work also on the suggestion of the complainant and started finishing work but the complainant has not made any further payment as per schedule of payment prescribed in the sale agreement. The respondent company claimed that they have completed 90% of the work in the unit of the complainant but the complainant has made payment of only 55% of the estimated cost. Even after issue of demand letter to the complainant, the complainant has not paid anything and has threatened to falsely implicate the respondent in legal proceedings.

4. In its para wise response, the respondent company admitted that minor changes have happened in the construction work but they claimed that they were due to practical difficulties arising out of architectural requirements. The Respondent Company claimed that there was no shortage in carpet area of the Apartment. The balcony was smaller because the flat was small and of low-cost project. They stated that they have engaged experienced and registered contractors and the quality of work done was good. They also claimed that the finishing work have not been completed because the complainant has not made payment.



Supplementary response to Counter-reply:

5. In the rejoinder filed to the counter-reply of the respondent, the complainant disputed the claim of the Respondent Company regarding the quality of work done and stated that the developer has increased the super built up area from 800 sq ft to 825 sq ft which she claimed to be negligence on the part of the respondent and gross violation of the terms and conditions of the agreement clause. She claimed that in bath room, tiles have not been fixed up to seven feet (7') as provided in the agreement. The complainant sought following reliefs in the counter affidavit :-

- 1- To direct the respondent concerned to deliver the possession of flat within a month with proper legal documentation.
- 2- To direct the respondent concerned to hand over the possession of the completely finished flat to the complainant.

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- 3- To direct the respondent concerned to pay rent @ 12000/- per months in case of delay in delivery after the expiry of one month from this rejoinder.

Supplementary Counter Affidavit of the Respondent:

6. In the supplementary counter affidavit, the respondent company has reiterated its earlier stand made in the counter reply to the complainant and stated that though they have completed 90% work in the unit of the complainant, the complainant has paid merely 55% of the cost in spite of several requests on phone or in person for payment of dues.
7. The respondent company also committed that only a few minor works remained to be done for getting the flat ready for delivery of possession. The company also stated that the lift, water tank and sewerage shall become operative within six months and the building will be habitable thereafter. They also submitted a payment plan in which they mentioned about first payment of 50% of the outstanding amount immediately while second payment of 25% of the outstanding amount at the time of installation of lift and third and final instalment of remaining 25% at the time of delivery of possession.

Hearing

8. In course of hearing, the complainant was represented by her learned counsel Mr Sharad Shekhar while the respondent company was represented by Ms Shivangi, Advocate. Both parties stuck to their stand mentioned in their written submissions. As the Bench found minor differences between the stand taken by the complainant as well as the respondent company, the Authority directed both the parties to sit together and see whether any conciliation between them could take place. Though initially the complainant had agreed with the respondent company to submit compromise petition before the Bench but finally both the parties did not agree within the prescribed time period.



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Issues for consideration:

9. There are two issues for consideration before the Bench. Firstly whether there are any material structural deficiencies in the apartment booked by the complainant and secondly whether there was any delay in completion of the project and handing over the possession of the Apartment to the allottee and if there was any delay, whether entire blame is that of developer only or whether complainant is also responsible for the delay in construction due to delay in making payment.

10. In her complaint petition as well as in course of deposition of the learned counsel of the complainant, it was primarily stated that there were structural deficiencies in her apartment i.e. width of the apartment was less by 10 inches, there was a pillar in balcony, restricting its usage, slab in the kitchen was low, which may not allow the gas cylinder to come beneath and tiles in the bathrooms were upto 4 feet only in place of seven feet provided in the agreement. The Respondent company has partially contested the claim, stating that the small differences in the width of the apartment was due to practical difficulties arising out of architectural design and could not be helped. Further, the super built up area has gone up from 800 sqft to 825 sqft, which was within permissible level. They have further contested the claim that gas cylinder wouldn't come under slab in the kitchen by showing a photograph of gas cylinder under the slab. They have further stated that the apartment would be done up at the time of handing over the possession.

11. As regards the second issue, the Respondent company has admitted that there was delay in completion of the apartment but it was due to non-payment of installment by the complainant in time. They stated that the complainant has paid Rs 10,97,515 only against the total estimated cost of Rs 16,20,000 till now. The payments were made between March 2012 to December 2014 with bulk of payment (Rs 6,80,000) was made on 30th December 2014. In her complaint, the



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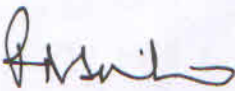


complainant had claimed that the Developer had promised to make available the apartment in December 2014. The Respondent company has stated that since the complainant had not made the payment timely, hence they couldn't complete the apartment in time. It is a matter of fact, the complainant had paid only Rs 4,17, 515 (about 26 percent of the estimated cost) only till 29th December 2014. It is matter of record as is evident from the payment schedule attached with the registered agreement for sale that the complainant was required to pay 85 % of the estimated cost by the time of roof-casting of the 4th floor. However, she has paid only about 67 % till now.

Order

12. Based on the aforesaid finding, the Bench is of the view that the case of the complainant is not sustainable. We consider the offer of the Respondent Company to complete the project within a period of six months as just and reasonable. Accordingly we direct the complainant to make payment of the balance amount in three installments- firstly 50 % of the remaining amount within a month of issue of the order, 25 % of the remaining amount at the time of commissioning of lift, installation of transformers, regular supply of water and establishment of drainage system in the project (Block B of Aditi) and final payment of 25% of the remaining amount at the time of possession after receipt of occupancy certificate from the competent authority. If the Respond company fails to fulfill its obligations and does not hand over the possession of the Apartment within six months of the issue of the order, they would be required to pay Rs 8000 per month to the complainant from 31st July 2019.




(R. B. Sinha) 30/1/2019
Member
Patna,
Dated the 30th January, 2019.




(Dr S.K. Sinha)
Member